IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.319 OF 2006
WITH
CIVIL APPLICATION NO.405 OF 2006

Mrs. Ann Silveira. ..Appellant.

V/s.

Mr.Agnelo Vincent Silveira. ..Respondent.

Mr.Clive D'Souza for appellant.

Mr. Umesh Shetty i/b M/s.Umesh Shetty & Co. for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 12, 2006.

P.C. :

1. Heard counsel for the parties.

2. According to the appellant view taken by the trial Court in non-suiting the appellant/plaintiff with direction of return of plaint is incorrect. It is submitted that the relief claimed in the present case were squarely covered by clause (6)(iv)(j) of the Bombay Court Fees Act, 1959 and not clause (6)(iv)(d) of that Act as has been found by the trial Court. This argument does not commend to me. In my opinion, the trial Court has rightly found that for the nature of relief claimed by the

appellant/plaintiff the suit was squarely covered by clause (6)(iv)(d) of the Act of 1959. This is so because the appellant/plaintiff has sought in prayer clause (a)-declaration that the plaintiff has a right to use, occupy and possess suit premises and the defendant is not entitled to disturb her possession of the suit premises except by due process of law. I find substance in the argument of the counsel for the respondent/defendant that such relief is squarely covered by clause (6)(iv)(d) of the Act of 1959. That provision postulates that suit for declaration in respect of certain matters which includes right of immovable property, in such case the court fee will have to be computed on one-fourth of ad valorem fee leviable for a suit for possession on the basis of title of the subject-matter, subject to minimum fee of one hundred rupees. To that extent the grievance of the appellant will have to be negatived.

3. During the course of the argument, the counsel for the appellant had contended that the Court below has misdirected itself in proceeding to determine the issue which was preliminary issue, even by resorting to Order 14 Rule 2 of C.P.Code. According to the appellant, issues involved mixed question of fact and law, for which reason it could

not have been decided under Order 14 Rule 2 of C.P.Code simplicitor. There is no substance in this submission. I find force in the argument of the respondent that the ultimate decision of the trial court is referable to power under order 7 Rule 10 one of return of plaint on the ground that court has no pecuniary jurisdiction. This issue has to be answered by the trial Court irrespective of the fact whether any written statement is filed by the defendant or for that matter even a formal reply. This is so because law requires the trial Court to ascertain for itself whether the frame of the suit is in confirmity with the provisions of law so as to assume jurisdiction. Order 7 rule 8 clearly provides that if the court has no jurisdiction court has to return the plaint. As mentioned earlier, this issue can be answered by the court on the basis of facts stated in the plaint itself. The trial Court in the present case particularly in paragraph-13 has adverted to the certain facts and view taken on that basis is the correct position. The Court below has rightly taken judicial notice of the fact that flat located at Bandra admeasuring 775 sq.ft. will definitely fetch monetary value of more than Rs.50,000/-. It is inconceivable that flat admeasuring 775 sq.ft. located at Bandra will not

fetch value more than Rs.50,000/-. This is not mere conjuncture, but the basis for such view reference is made to the ready reckoner available for computing standard market value with regard to the transfer of immovable property. The trial Court has rightly assumed that the value of such flat will not be less than Rs. 90 lakhs as per the ready reckoner. Suffice to observe that no fault can be found with the approach of the Court below in taking the view that frame of suit as presented clearly excludes the jurisdiction of the City civil Court.

4. Counsel for the appellant at the end of hearing submits that in that case the appellant will delete prayer clause (a) of the plaint and will proceed with the suit only for relief of permanent order and injunction against the defendant in respect of the suit property. Such relief according to the appellant would be squarely covered by Provision of Section (6)(iv)(j) of the Act 1959. This submission is opposed by the counsel for the respondent on the argument that if the relief in terms of prayer clause (a) is not pressed, plaintiff will not succeed in the suit. It is not necessary for me to dwell upon all these aspects. Suffice it to observe that if the appellant/plaintiff deletes prayer clause (a) of the

suit, then whether it will be possible to take the view that the suit simplicitor for relief in terms of prayer clause (b) can proceed before that court or is amenable to section 6(iv)(j) is a matter to be answered by the Trial Court in the first instance. Prima facie, relief in terms of prayer clause (b) will be covered by section 6(iv)(i). However, the trial court will not be influenced by any of these observations.

5. By this order, appellant is granted liberty to move the trial Court for appropriate amendment and further reliefs, as may be advised; and if such application is moved, the trial court will decide the same on its own merits in accordance with the law. If such application is made the same be decided expeditiously preferably within four weeks from the date of its presentation. To facilitate the appellant to move the trial Court for necessary relief, the order impugned in this appeal which has been confirmed by this order will not be given effect to for a period of three weeks from today.

6. It is made clear that if the appellant fails to take any steps within three weeks, the order passed by the trial court will be given effect to and

consequential steps on that basis will be adopted.

7. At this stage, counsel for the appellant submits that interim protection granted by the lower court may be continued for a period of three weeks to enable them to move before the trial Court. That indulgence is shown.

8. It is made clear that it will be open to the trial Court to pass such order, as may be required and warranted in the fact situation of the present case with regard to the continuation of Interim relief.

9. Appeal as well civil application disposed of on the above terms.